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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 164

SUMIO MADOKORO, IN BEHALF OF SANNOSUKE MADOKORO, AND SANNOSUKE MADOKORO, PETITIONERS

v.

ALBERT DEL GUERCIO, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE, LOS ANGELES, CALIFORNIA, DISTRICT NO. 16

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 11–15) is not reported. The opinion of the circuit court of appeals (R. 74–80) is reported at 160 F. 2d 164.

JURISDICTION

The judgment of the circuit court of appeals was entered February 27, 1947 (R. 80–81), and

a petition for rehearing was denied April 4, 1947 (R. 81). The petition for a writ of certiorari was filed June 30, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a Japanese alien returning after a temporary absence to an unrelinquished United States domicile of more than seven consecutive years may be admitted under the seventh proviso to Section 3 of the Immigration Act of 1917, even though (1) he does not have an unexpired visa as required by Section 13 (a) of the Immigration Act of 1924, and (2) he is barred by Section 13 (c) of the 1924 Act by reason of his being an alien ineligible to citizenship and not excepted by that provision.

2. Whether petitioner was denied due process of law in not being furnished with counsel at his deportation hearing, where he indicated through an interpreter (whom he said he had thoroughly understood) that he did not desire to be represented by an attorney or other person.

STATUTES, EXECUTIVE ORDERS, AND REGULATIONS INVOLVED

The various provisions of the immigration statutes, executive orders and regulations involved are set out in the Appendix, *infra*, pp. 19–26.

STATEMENT

The present proceeding arises on a petition for a writ of habeas corpus (R. 2–6) challenging the validity of an order and warrant for petitioner's deportation.

Petitioner Sannosuke Madokoro, herein referred to simply as petitioner, a native and citizen of Japan (R. 3, Tr. 18–19),[1] first entered the United States at Seattle, Washington, on August 21, 1915, as a member of the crew of the *Tacoma Maru,* which he deserted on August 22, 1915 (Tr. 20 and accompanying Exhibit 2). Except as noted below, petitioner has resided in this country continuously since that time (Tr. 20). Between 1918 and 1926, petitioner made numerous trips between the United States and Mexico for the purpose of managing a ranch in the latter country (R. 44–45, Tr. 20–21). His last such trip was made on December 28, 1926, when he want to Mexicali, Mexico, for half a day and returned to the United States at Calexico, California (R. 13, Tr. 23).

[1] The designation "R" refers to the printed transcript of record. "Tr." refers to the transcript of the deportation hearing which, with the other pertinent deportation documents, was attached to the Return to the Writ of Habeas Corpus as Exhibit A. Exhibit A was, by stipulation (R. 70), not printed, but was considered in its original form by the court below and is presently lodged with the Clerk of this Court.

At that time petitioner had no visa or other valid entry papers.[2]

On February 18, 1942, petitioner was taken into custody as an enemy alien and ultimately interned in a detention station at Fort Lincoln, North Dakota (R. 33).[3] On March 18, 1942, while petitioner was interned at Fort Lincoln, a warrant directing his arrest was issued, charging that he last entered the United States on December 28, 1926, and that he was subject to deportation "in that at the time of his entry he was not in possession of an unexpired immigration visa; and in that he is an alien ineligible to citizenship and not exempted by Paragraph (c) Section 13 [of the Immigration Act of 1924]" (R. 75). Thereafter, on March 23, 1942, petitioner was accorded a hearing under the warrant.

At the opening of the hearing, which was conducted through an interpreter, petitioner indicated that he understood the nature of the charges, which were read to him at that time, that he understood that the purpose of the hearing was to afford him an opportunity to show

[2] At an earlier date, petitioner had been issued a so-called border-crossing identification card (Tr. 21 and accompanying Ex. 3), but the card admittedly had expired before the December 28, 1926, entry (Tr. 23). Moreover, petitioner conceded that the card was obtained fraudulently (Tr. 22–23). As will be pointed out below, fn. 10, p. 10, and text, such a card could not be issued to aliens who had entered the United States illegally.

[3] Fort Lincoln is about four miles from Bismarck, North Dakota.

cause why he should not be deported, that he did not desire to be represented by counsel either professional or lay, and that he was ready and willing to proceed with the hearing at that time.' At the close of the hearing, petitioner acknowl-

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' "Presiding Inspector to Respondent:

"Q. Are you able to speak and understand the English language?—A. Not much.

"Q. Do you understand the Japanese language as spoken by Mr. Kimm?—A. Yes.

"Q. There is presented for your inspection a formal warrant of arrest No. 56095/851 issued at Philadelphia, Pennsylvania, by the chief of the Warrant Branch of this Service wherein it is charged that one Sannosuke Madokoro who entered this country at Calexico, California, December 28, 1926, has been found unlawfully in the United States and subject to deportation therefrom under the following provisions of law:

" 'The Immigration Act of 1924 in that, at the time of entry he was not in possession of an unexpired immigration visa, and that he is an alien ineligible to citizenship and not excepted by Section 13 (c) thereof.'

"Q. Do you understand the nature of these charges?—A. Yes.

"Q. Do you have a copy of this warrant of arrest?—A. Yes.

"Q. A hearing will be granted for the purpose of affording you an opportunity to show cause, if there be any, why you should not be deported from the United States under the charges stated in this warrant of arrest. Do you understand?—A. Yes.

"Q. At this hearing you have the right to be represented by counsel, either an attorney or other person of good moral character, of your own selection and at your own expense, do you wish to be so represented?—A. No.

"Q. Are you ready and willing to proceed with your hearing at this time?—A. Yes.

edged that he had understood the official interpreter.[5]

Subsequent to the hearing, the presiding inspector's proposed findings, conclusions and order (Tr. 15–17) were served upon petitioner, who filed no formal exceptions thereto (Tr. 14).[6] After reviewing the case, the Board of Immigration Appeals concluded that petitioner was subject to deportation on the grounds recited in the warrant of arrest (see Acting Chairman's memorandum of August 18, 1942, Tr. 11–13),[7] and accordingly a warrant for his deportation to Japan, execution of which was "to be deferred until such time

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"Q. Raise your right hand and be sworn: Do you solemnly swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God?—A. Yes." (Tr. 18.)

See Immigration Regulation 150.6, *infra*, pp. 25–26, for the requirements to assure that the alien is informed of his rights and of the purpose of the hearing.

[5] "Q. Have you thoroughly understood the interpreter during this hearing?—A. Yes." (Tr. 30.)

See also the second question and answer set out in footnote 4, *supra*.

[6] Under date of April 8, 1942, however, petitioner wrote to the Commissioner of Immigration and Naturalization protesting generally against the inspector's conclusions, and asking that he be permitted to stay in the United States (R. 46–48; Tr. 39–40).

[7] Under Immigration Regulations, review by the Board is automatic (see 8 C. F. R. 150.7–150.9). Cf. Pet. 18 asserting that "Representation by counsel would have enabled petitioner * * * to appeal to the Board of Immigration Appeals * * *."

as deportation becomes practicable," was issued (Tr. 10).

On December 21, 1945, a petition for a writ of habeas corpus was filed on petitioner's behalf in the District Court for the Southern District of California asserting as the sole ground for relief that his detention pursuant to the above-described deportation proceeding and warrant was illegal in that at the deportation hearing "petitioner did not have the opportunity to have the benefit of counsel, in violation of federal statutes and departmental regulations" (R. 2–6). After a return had been made (R. 6–8), a full hearing was had (R. 9–10, 23–65) at which petitioner testified (R. 10, 37–51), and was represented by counsel of his own choice (R. 9, 23). Thereafter, the district court discharged the writ and dismissed the petition (R. 17–18). On appeal to the Circuit Court of Appeals for the Ninth Circuit, the order was affirmed (R. 80–81).

ARGUMENT

The petition for a writ of certiorari challenges the deportation proceedings on two grounds: (1) that petitioner was not given a fair hearing in that under the circumstances counsel should have been assigned him (Pet. 12–13, 15–28), and (2) that he was not deportable because at the time of his return to the United States on December 28, 1926, he was admissible under the seventh

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proviso to Section 3 of the Immigration Act of 1917 as an alien with an unrelinquished United States domicile of seven consecutive years (Pet. 13–14, 29–34).

1. As we have already noted, *supra,* p. 7, the petition for a writ of habeas corpus raised only the question of denial of due process by reason of an alleged denial of the right to counsel. Moreover, at the habeas corpus hearing, petitioner's counsel, who also represents him here, stated repeatedly that this was the only issue involved (R. 24, 30, 46). Consequently, we do not believe that the circuit court of appeals should have considered petitioner's contention raised for the first time on appeal and now renewed here, that the deportation order was illegal because petitioner was admissible in 1926 under the seventh proviso to Section 3 of the 1917 Act. But, in any event, as the court below held (R. 75–78), it is clear that, as a matter of law, petitioner's substantive contention is without merit.

This appears clearly once the pertinent legislation is reviewed in its setting.

The Immigration Act of February 5, 1917, which is the foundation of our present immigration laws, embodied all the previous laws on immigration. The keystone of that statute is the series of desirability standards set out in Section 3[8] providing for the exclusion of such aliens as

[8] 39 Stat. 874, 8 U. S. C. 136.

are physically, mentally, morally, or politically undesirable. They cannot enter if they have a contagious disease, or if they cannot read or write, or if they are polygamists or have committed a crime involving moral turpitude, or if they are anarchists or desire by force to overthrow the government. However, the so-called "seventh proviso" to Section 3 (*infra*, p. 19) permits their admission in the discretion of the Secretary of Labor (now the Attorney General) under such conditions as he may prescribe, if the aliens are "returning after a temporary absence to an unrelinquished United States domicile of seven consecutive years." In exercising authority under the foregoing proviso, certain disqualifications created by the desirability standards of Section 3 can be waived. See Immigration Manual, § 584 at p. 5159. The 1917 Act did not provide any quota or visa system, but permitted free immigration, subject to conformance with the desirability standards and to other possible exclusion laws or treaties.

By 1924, Congress concluded that unlimited immigration to the United States was no longer desirable and that immigration should be limited both in terms of total numbers admitted and in relation to the national origins of the immigrants. See H. Rep. 350, 68th Cong., 1st sess. Accordingly, it enacted a new statute [9] denying admission

[9] Act of May 26, 1924, c. 190, 43 Stat. 153, 8 U. S. C. 201–231.

for permanent residence to Asiatics and limiting the admission of all others by means of a quota and visa system. So far as is pertinent here, the 1924 Act provided in Section 13 (*infra*, p. 20) that no immigrant was to be admitted unless he had an unexpired immigration visa (subsection (a)), except that certain aliens who had previously been *legally* admitted and had departed temporarily might be readmitted without a visa (subsection (b)),[10] and that no alien ineligible to citizenship should be admitted unless he came within certain specified but limited exceptions (subsection (c)) one of which, by cross-reference to Section 4 (b)[11], was essentially the same as the exception provided by 13 (b). Japanese aliens

[10] The visa requirement was reiterated by Executive Order No. 4476, of July 12, 1926 (*infra*, pp. 21–22), and by the Immigration Rules of July 1, 1925 (Rule 3, subdivision F, paragraph 1, *infra*, p. 22), both of which were in force at the time of petitioner's last entry. So far as is pertinent here, only two exceptions were thereby allowed, but neither applied unless the aliens had been previously *legally* admitted to the United States. The first exceptions covered temporary trips of less than six months to adjacent lands, such as Mexico and Canada, the readmission of aliens in this category to be effected by so-called border-crossing identification cards. See Rule 3, subdivision R, paragraph 1 of Immigration Rules of July 1, 1925 (*infra*, p. 23); cf. present rule 8 C. F. R. 110.54 (a). The second exception related to aliens temporarily traveling abroad other than as above, whose readmission was to be effected by the issuance of permits to reenter. See Rule 24, subdivision B, paragraph 1 of Immigration Rules of July 1, 1925 (*infra*, pp. 23–25); cf. present rule 8 C. F. R. 165.3.

were then, as now, ineligible for citizenship. See Nationality Code, 8 U. S. C. 703 and notes; see also H. Rep. 350, 68th Cong., 1st sess., pp. 4–10.

To assure that aliens seeking to qualify for admission would have to meet the requirements of both the 1924 and the 1917 acts, Congress inserted in the 1924 statute Section 25 (*infra,* p. 21), which, so far as is pertinent to the instant case, provides:

> The provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws * * *. * * * an alien, although admissible under the provisions of the immigration laws other than this Act, shall not be admitted to the United States if he is excluded by any provision of this Act.

Thus it is clear that conformance to the requirements of both statutes is a prerequisite to admissibility. *United States* v. *Curran,* 9 F. 2d 900, 901 (C. C. A. 2), certiorari denied, 270 U. S. 647.[12]

In this setting, it is apparent that, even assuming petitioner could, in 1926, have qualified under

[11] Section 4 (b) (*infra,* p. 19) defined non-quota immigrants to include such aliens as have been "previously lawfully admitted to the United States, who [are] returning from a temporary visit abroad."

[12] H. Rep. 350, 68th Cong., 1st sess., p. 2, states that "an immigrants, although admissible under the immigration laws, will be excluded from the United States unless he meets the requirements of the new [1924] act."

the seventh proviso to Section 3 of the 1917 Act,[13] he was then inadmissible by reason of the supplementary requirements of Section 13 of the 1924 Act.[14] He did not then possess a visa as required by subsection (a) nor was he eligible for admission without a visa under subsection (b) because of the illegality of his original entry in 1915. Without such admission papers he could not enter. *United States ex rel. Polymeris* v. *Trudell,* 284 U. S. 279. Moreover, being an alien ineligible to citizenship who had originally entered illegally he was barred by subsection (c).

While there can be no doubt, therefore, that petitioner was inadmissible in 1926, we shall briefly answer some of the arguments advanced to the contrary. Petitioner's contention that this application of Section 13 would result in an implied repeal of the seventh proviso and that such a repeal cannot be assumed in the absence of expressed legislative intent (Pet. 30–32), is

[13] While we do not urge the point here, we have some doubt whether petitioner could have acquired "domicile" in the United States, within the meaning of that proviso, in view of his illegal entry. Cf., e. g., *Werblow* v. *United States*, 134 F. 2d 791, 792 (C. C. A. 2); *United States* v. *Kreticos*, 40 F. 2d 1020, 1021 (App. D. C.).

[14] The Immigration Manual (§ 584 at p. 5159) provides, in conformity with Section 25 of the 1924 Act, that the authority of the Attorney General under the seventh proviso may be exercised to waive certain disabilities under Section 3 of the 1917 Act, but not to waive the requirements of Section 13 of the 1924 Act, except in so far as aliens may come within the exceptions therein provided.

squarely disposed of by the terms of Section 25 of the 1924 Act, making admissibility contingent on the alien's meeting the requirements of that act as well as of other immigration laws and by the fact that the advantages of the seventh proviso are still available to aliens otherwise inadmissible, including those ineligible to citizenship, provided that they meet the requirements of Section 13. See fn. 14, *supra*. Thus, for example, a Japanese alien who by reason of physical or mental disability cannot meet the desirability standards of Section 3 of the 1917 Act, can, if he originally entered the United States legally and has been domiciled here continuously for seven years, be readmitted under the seventh proviso by securing admission papers issued under Section 13 (b).

Similarly, there is no foundation for the argument (Pet. 29–30) that the Government discriminates in applying the several requirements of Section 13 to aliens otherwise qualified for admission under the seventh proviso, in that it compels compliance with those requirements of Section 13 applicable to aliens ineligible to citizenship (subsection (c)) but does not similarly compel compliance with the other provisions of Section 13 (subsections (a) and (b)), for, as we have shown, all of the requirements of Section 13 must be met by any alien seeking admission. Thus, an examination of the deportation case files discloses that in not a single instance since the enactment of the 1924 Act has an alien been admitted under the

seventh proviso unless he possessed a proper visa, as required by 13 (a), or came within the exception provided by 13 (b). See also *United States ex rel. Polymeris* v. *Trudell, supra,* in which the aliens involved obviously came within the terms of the seventh proviso, but were held inadmissible by reason of noncompliance with the visa requirement of 13 (a).

Petitioner's final argument—on the basis of which he seeks to assimilate the instant case to *Delgadillo* v. *Del Guercio,* No. 63, O. T. 1947, certiorari granted June 2, 1947—is that his departure and return in December 1926 did not constitute an "entry" into the United States within the meaning of Section 13 of the 1924 Act, because that section is applicable only to "true immigration" and not to so-called border crossing (Pet. 32–34). However, in the *Delgadillo* case the question posed by the petition for a writ of certiorari is whether a fortuitous and involuntary departure and touching upon foreign soil makes the return to the United States an "entry" within the meaning of the immigration laws.[15] Here, in contra-

[15] The petition in *Delgadillo* was concerned with a return from Cuba, where petitioner had landed after his ship was torpedoed. In opposition to the granting of the writ of certiorari, respondent urged (1) that the Cuban landing was not completely unforeseeable and that, therefore, petitioner's return to the United States constituted an entry, and (2) that, in any event, petitioner had intentionally and voluntarily landed on other foreign soil (Panama) before returning to the United States.

distinction, petitioner's departure and return were completely voluntary and intentional, and for his own purposes. And the law is well settled, without any contravening authority, that a witting departure and return to the United States, no matter for how brief a period of time, constitutes the return an "entry" for purposes of all the immigration laws of the United States. See, e. g., *Lewis* v. *Frick,* 233 U. S. 291, 297 (one day trip to Canada); *Guarneri* v. *Kessler,* 98 F. 2d 580 (C. C. A. 5), certiorari denied, 305 U. S. 648 (two or three day trip to Cuba); *Jackson* v. *Zurbrick,* 59 F. 2d 937 (C. C. A. 6) (few hours' trip to Canada); *Ex parte Tatsuo Saiki,* 49 F. 2d 469 (W. D. Wash.); *Cahan* v. *Carr,* 47 F. 2d 604, 605 (C. C. A. 9), certiorari denied, 283 U. S. 862 (one day trip to Tiajuana, or Agua Caliente); *United States ex rel. Medick* v. *Burmaster,* 24 F. 2d 57, 58 (C. C. A. 8) (taxi driver taking passenger to Canada and returning all within one day); *United States ex rel. Natali* v. *Day,* 45 F. 2d 112, 113 (C. C. A. 2) (two day trip to Canada); *United States ex rel. Siegel* v. *Reimer,* 23 F. Supp. 643 (S. D. N. Y.), affirmed, 97 F. 2d 1020 (C. C. A. 2) (two day trip to Canada). Since the foregoing doctrine was firmly established well before the enactment of the 1924 Act, Section 13 must be construed to apply to all immigrants, including the so-called border-crossers. See S. Rep. 352, 64th Cong., 1st. sess., p. 3. That conclusion is buttressed by the very terms of Section 13, for

subsection (b) (*infra*, p. 20), in language similar to that employed in the seventh proviso,[16] permits the readmission, without visas, in such classes of cases and under such conditions as may be prescribed administratively, of aliens who have been legally admitted to the United States and "who depart therefrom temporarily."[17]

2. From the foregoing analysis it is obvious, as both courts below held (R. 14, 79–80), that even if petitioner was denied due process of law at the deportation hearing, no prejudice resulted. The basic facts which were virtually stipulated in the habeas corpus court necessarily and unavoidably required the conclusion that he was deportable. Accordingly, it would serve no useful purpose to

[16] The seventh proviso, under which petitioner asserts his admissibility, applies to aliens "returning after a temporary absence" to an unrelinquished United States domicile of seven consecutive years.

[17] Petitioner argues that subsection (b) refers to "true immigration rather than border-crossing" because it has been held to include departures for extended periods (Pet. 33). However, it does not follow, as petitioner implies, that the provision does not apply to departures of very short duration. Nor is there any foundation in the immigration laws, regulations, or decisions for petitioner's treatment of temporary departures other than so-called border-crossing as "true immigration," with border-crossing as something less than that. As a practical matter, petitioner's classification would, without the benefit of explicit statutory sanction, lead to confusion and uncertainty, for no standards are available to determine when a departure and return crosses the line from the temporary departure or "true immigration" category to the border-crossing group, or vice versa.

remand the cause to the immigration authorities for further hearing because nothing could be there adduced to alter that conclusion. Cf. *Bridges* v. *Wixon*, 326 U. S. 135, 167.

In any event, it is clear that petitioner was given a fair hearing by the immigration authorities. Since he could not follow the proceedings in English, the presiding inspector questioned him through an interpreter whom petitioner several times unqualifiedly assured the inspector he thoroughly understood. Moreover, at the beginning of the hearing, upon questioning by the presiding inspector, petitioner acknowledged that he understood the nature of the charges, which were read to him at that time, and that he understood the hearing was to afford him the opportunity to show cause, if any, why he should not be deported. When the inspector asked whether he wished, according to his right, to be represented by counsel, he said "No," and then affirmed that he was ready and willing to proceed with the hearing at that time.[18]

While it may be that the issues involved in the hearing were somewhat technical, petitioner there conceded he understood them and his assurances are supported by the fact that he appears to be an intelligent and capable business man (R. 44–45). His contentions here notwithstanding (see Pet.

[18] See Immigration Regulation 150.6 (*infra*, pp. 25–26) for requirements to assure alien's knowledge of rights and purpose of hearing.

22–24), he introduced no evidence in the habeas corpus court, other than his own equivocal testimony (see R. 35, 37–39), to dispel the clear impression imparted by the record of the deportation hearing that his waiver of counsel was intelligently made. Moreover, since petitioner did not, after having been clearly advised of his rights and the nature and purpose of the hearing, qualify or explain his waiver in any way, and since he consented to proceed with the hearing forthwith, he is in no position now to urge that he needed more time to appraise his situation (Pet. 26–27), that he was unable to afford counsel (Pet. 22),[19] and that, in view of all the circumstances, counsel should have been assigned.

CONCLUSION

The decision below is clearly correct, and there exists no conflict of decisions. Accordingly, we respectfully submit that the petition should be denied.

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Solicitor General.

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AUGUST 1947.

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[19] From the records of the deportation hearing (Tr. 14, 18) and of the habeas corpus court (R. 49–51), it is not clear that petitioner could not have afforded counsel.

APPENDIX

The seventh proviso to Section 3 of the Immigration Act of February 5, 1917, c. 29 § 3, 39 Stat. 874, 878, 8 U. S. C. 136 (p) provides:

> * * * That aliens returning after a temporary absence to an unrelinquished United States domicile of seven consecutive years may be admitted in the discretion of the Secretary of Labor, and under such conditions as he may prescribe * * *

The Immigration Act of May 26, 1924, c. 190, 43 Stat. 153 (8 U. S. C. 201–231) provides in pertinent part:

> SEC. 4 [8 U. S. C. 204]. When used in this Act the term "non-quota immigrant" means—
>
> * * * * *
>
> (b) An immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad;
>
> * * * * *
>
> (d) An immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of, carrying on the vocation of minister of any religious denomination, or professor of a college, academy, seminary, or university; and his wife, and his unmarried children under 18 years of age, if accompanying or following to join him; or
>
> (e) An immigrant who is a bona fide student at least 15 years of age and who

seeks to enter the United States solely for the purpose of study at an accredited school, college, academy, seminary, or university, particularly designated by him and approved by the Secretary of Labor, which shall have agreed to report to the Secretary of Labor the termination of attendance of each immigrant student, and if any such institution of learning fails to make such reports promptly the approval shall be withdrawn.

SEC. 13 [8 U. S. C. 213]. (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a non-quota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws.

(b) In such classes of cases and under such conditions as may be by regulations prescribed immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa.

(c) No alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivision (b), (d), or (e) of section 4, or (2) is the wife, or the unmarried child under 18 years of age, of an immigrant admissible under such subdivision (d), and is accompanying or following to join him, or (3) is not an immigrant as defined in section 3.

SEC. 25 [8 U. S. C. 223]. The provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this Act. An alien, although admissible under the provisions of this Act, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this Act, and an alien, although admissible under the provisions of the immigration laws other than this Act, shall not be admitted to the United States if he is excluded by any provision of this Act.

Executive Order 4476 of July 12, 1926 (set out in Immigration and Nationality Laws and Regulations as of March 1, 1944 at pp. 234–237) provided in part as follows:

> * * * I hereby prescribe the following regulations governing the entry of aliens into the United States:
>
> * * * * * *
>
> (2) Aliens who have previously been admitted legally into the United States, have departed therefrom and returned within six months, not having proceeded to countries other than Canada, Newfoundland, St. Pierre, Miquelon, Bermuda, Mexico, Cuba, and other Islands included in the Bahama and Greater Antilles groups, are not required to present passports, visas, or permits to reenter.
>
> (3) Aliens, other than those specified in (2) above, who have previously been admitted legally into the United States, have

departed therefrom, and are returning from a temporary visit abroad, may present, in lieu of immigration visas, permits to reenter, issued pursuant to Section 10 of the Immigration Act of 1924.

The Immigration Rules of July 1, 1925 (set out in Immigration Laws and Rules of July 1, 1925) provided in part as follows:

RULE 3, SUBDIVISION F

PARAGRAPH 1. No immigrant, whether a quota immigrant or non-quota immigrant, of any nationality shall be admitted to the United States unless such immigrant shall present to the proper immigration official, at the port of arrival, an immigration visa duly issued and authenticated by an American consular officer: *Provided,* That (a) aliens who have been previously lawfully admitted to the United States and who are returning from a temporary visit of not more than six months to Canada, Newfoundland, Bermuda, St. Pierre, Miquelon, Mexico, and islands included in the Bahama and Greater Antilles groups, or such aliens who are returning from a temporary visit to any other foreign country and who are in possession of a permit to reenter the United States issued in accordance with the provisions of section 10 of the immigration act of 1924, and (b) children born subsequent to the issuance of an immigration visa to the accompanying parent, if otherwise admissible, shall be permitted to enter the United States without an immigration visa.

SUBDIVISION R

Aliens and citizens habitually crossing boundaries—Identification

PARAGRAPH 1. With a view to avoiding delays and embarrassment in cases of aliens and citizens who, residing upon either side of the line, habitually cross and recross the boundary upon legitimate pursuits, an identification card will be furnished such persons upon application to the immigration official in charge at the place of ingress and egress. The applicant for such a card shall be required to furnish two unmounted photographs of himself, of appropriate size, for attachment to the card, and shall supply the data necessary to fill out the card in complete form. To guard against the use of the card by any other person than the one to whom furnished (through its being lost or stolen or otherwise improperly acquired) the official issuing the card shall require the applicant to sign his name partly on the margin of the photograph and partly on the body of the card itself: *Provided,* That such card may be taken up or canceled at any time within the discretion of the proper immigration official.

RULE 24, SUBDIVISION B

PARAGRAPH 1. An alien previously lawfully admitted to the United States for permanent residence who is about to depart temporarily therefrom and who desires a permit to reenter may, not less than 30 days prior to his departure from the United States, file with the Commissioner General of Immigration a typewritten ap-

plication (Form 631), stating under oath (1) name, date and place of birth of the applicant; (2) time and manner of arrival in the United States and port where previously legally and permanently admitted; (3) place of residence in the United States and length of such residence; (4) whether married or single, and, if married, name and address of husband or wife; (5) applicant's business and where located, or, if employed, name and address of employer and nature of occupation; (6) applicant's personal description; (7) when and how alien will depart from the United States, countries to be visited, and period he will be absent; and (8) reasons for applicant's visit abroad; provided that if the visit abroad is for the transaction of business as the agent or other representative of an individual, partnership, or corporation residing in or having its place of business in the United States, a letter from such individual, partnership, or principal officer of the corporation stating the object and purpose of alien's visit shall be filed with the application and be made part thereof. Applicant shall furnish with such application two unmounted, individual, front-view photographs of himself, 2½ by 2½ inches in size, which shall be signed by the applicant on the front in such manner as not to obscure the features and in the presence of the officer administering the oath. If the Commissioner General finds that the alien has been legally admitted to the United States for permanent residence and that the application is made in good faith, he shall, with the approval of the Secretary of Labor, issue such permit to the applicant, which shall be valid for the time therein

specified. Such permit will, however, have no effect under the immigration laws except to show that the alien to whom issued is returning from a temporary visit abroad. A separate application must be submitted by each alien.

Immigration Regulation 150.6 (8 C. F. R.) proprives in pertinent part:

> (c) *Hearing; procedure; notice of charges.*—At the beginning of a hearing under a warrant of arrest, the presiding inspector shall (1) permit the alien to inspect the warrant of arrest and inform him of the charges contained therein by repeating them verbatim and explaining them in language which will clearly convey to the alien the nature of the charges he must answer; (2) apprise the alien, if not represented by counsel, that he may be so represented if he desires and require him to state then and there for the record whether he desires counsel; (3) place the alien under oath or affirmation; (4) advise the alien of the penalty for perjury; and (5) enter of record as an exhibit, indentified by number, the formal warrant of arrest, or a decoded copy of the telegraphic warrant if hearing is held thereunder. The presiding inspector shall further advise the alien of the provisions of paragraph (g) of this section concerning applications for the privilege of departure in lieu of deportation or for suspension of deportation under the provisions of section 19 (c) of the Immigration Act of 1917, as amended, in all cases except those in which the alien is charged with being subject to deportation upon one of the grounds mentioned in section 19 (d) of the said Act. A continuance of the hearing

for the purpose of obtaining counsel shall not be granted more than once, unless sufficient cause for the granting of more time is shown.

(d) *Hearing; representation by counsel.*—If counsel be selected, he shall be permitted to be present during the hearing, to offer evidence to meet any evidence presented or adduced by the Government, and to cross-examine witnesses called by the Government. Counsel shall be permitted to state his objection succinctly, and they shall be entered on the record. Argument of counsel in support of his objections shall be excluded from the record. Counsel, however, may submit such argument in the form of a brief to accompany the record.

(e) *Hearing; where representation by counsel waived.*—If representation by counsel be waived, the alien shall be permitted to offer evidence to meet any evidence presented or adduced by the Government, to cross-examine witnesses called by the Government, and to make objections, which shall be entered on the record, but his arguments in support of the objections may, in the discretion of the presiding inspector, be excluded from the record, in which event, however, the alien shall be permitted to submit such arguments in writing to accompany the record.

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